

FEDERAL CIRCUIT COURT OF AUSTRALIA

ALI v MINISTER FOR IMMIGRATION & ANOR

[2025] FCCA 121

Catchwords:

MIGRATION – Administrative Appeals Tribunal – partner (Provisional) (Class UF) (subclass 309) visa – whether no evidence ground only applies to jurisdictional facts – whether findings illogical – whether Tribunal failed to afford procedural fairness.

Legislation:

Migration Act 1958, ss.5F, 359A, 360

Migration Regulations 1994, reg.1.15A

Cases cited:

Australian Postal Corporation v D’Rozario (2014) 222 FCR 303; (2014) 143 ALD 564; (2014) 311 ALR 257; [2014] FCAFC 89

Buchwald v Minister for Immigration and Border Protection (2016) 242 FCR 65; [2016] FCA 101

Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337; (2000) 63 ALD 577; (2000) 176 ALR 644; (2000) 75 ALJR 277; (2000) 21(20) Leg Rep 13; [2000] HCA 63

Gill v Minister for Immigration and Border Protection (2017) 250 FCR 309; [2017] FCAFC 51

Kostas v HIA Insurance Services Pty Ltd (2010) 241 CLR 390; (2010) 270 ALR 228; (2010) 84 ALJR 663; [2010] HCA 32

SFGB v Minister for Immigration and Multicultural and Indigenous Affairs (2003) 77 ALD 402; [2003] FCAFC 231

SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs (2006) 228 CLR 152; (2006) 93 ALD 300; (2006) 231 ALR 592; (2006) 81 ALJR 515; [2006] HCA 63

SZBYR v Minister for Immigration and Citizenship (2007) 96 ALD 1; (2007) 235 ALR 609; (2007) 81 ALJR 1190; [2007] HCA 26

SZWCO v Minister for Immigration and Border Protection [2016] FCA 51

Applicant:

SELVETA ALI

First Respondent:

MINISTER FOR IMMIGRATION &
BORDER PROTECTION

Second Respondent:	ADMINISTRATIVE APPEALS TRIBUNAL
File number:	MLG 216 of 2017
Judgment of:	Judge Riley
Hearing date:	1 November 2017
Date of last submission:	1 November 2017
Delivered at:	Melbourne
Delivered on:	22 January 2018

REPRESENTATION

Counsel for the applicant:	Francesca Leoncio
Solicitors for the applicant:	TAI Lawyers
Counsel for the first respondent:	Mark Hosking
Solicitors for the first respondent:	Clayton Utz
Counsel for the second respondent:	No appearance
Solicitors for the second respondent:	Clayton Utz

ORDERS

- (1) The decision of the Administrative Appeals Tribunal made on 18 January 2017 in matter number 1508547 be set aside.
- (2) The matter be remitted to the Administrative Appeals Tribunal for determination according to law.
- (3) The first respondent pay the applicant's costs of the proceeding fixed in the sum of \$7,328.

**FEDERAL CIRCUIT COURT
OF AUSTRALIA
AT MELBOURNE**

MLG 216 of 2017

SELVETA ALI
Applicant

And

MINISTER FOR IMMIGRATION & BORDER PROTECTION
First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL
Second Respondent

REASONS FOR JUDGMENT

Introduction

1. This is an application for review of a decision made by the Administrative Appeals Tribunal (“the Tribunal”). In that decision, the Tribunal affirmed a decision of a delegate of the Minister not to grant the applicant a partner (Provisional) (Class UF) (subclass 309) visa.
2. The applicant before this court is the sponsor of Mr Asmir Ametov. Mr Ametov is the father of Sara Ametov, who is now 17 years old. The applicant was the review applicant before the Tribunal, and was described by the Tribunal as the sponsor. Mr Ametov and Sara Ametov were the visa applicants before the Tribunal. The Tribunal described Mr Ametov as the applicant.

3. Mr Ametov is a 50 year old citizen of the Former Yugoslavian Republic of Macedonia (“Macedonia”). The applicant is a 57 year old citizen of Australia.
4. The applicant and Mr Ametov were married on 12 June 2014 in Macedonia. Mr Ametov and the applicant had both been married previously to other people. Mr Ametov is said to have been married from 1 December 2001 until 25 March 2003. Sara, the child of that union, was born on 24 October 2000. The applicant was divorced on 10 November 2013. She had two children from her previous marriage who are now adults. She also has a number of grandchildren.
5. The applicant and Mr Ametov have spent relatively little time together and they are presently apart, as the applicant is in Australia and Mr Ametov is in Macedonia. The Tribunal accepted that they were married on 12 June 2014 in Macedonia. However, the Tribunal concluded that the applicant and Mr Ametov were not in a married relationship as defined in s.5F(b), (c) and (d) of the *Migration Act 1958* (“the Act”).
6. Section 5F of the Act provided at the relevant time:
 - (1) *For the purposes of this Act, a person is the **spouse** of another person if, under subsection (2), the 2 persons are in a married relationship.*
 - (2) *For the purposes of subsection (1), persons are in a **married relationship** if:*
 - (a) *they are married to each other under a marriage that is valid for the purposes of this Act; and*
 - (b) *they have a mutual commitment to a shared life as husband and wife to the exclusion of all others; and*
 - (c) *the relationship between them is genuine and continuing; and*
 - (d) *they:*
 - (i) *live together; or*
 - (ii) *do not live separately and apart on a permanent basis.*

- (3) *The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.*

7. Regulation 1.15A of the *Migration Regulations 1994* (“the Regulations”) provided at the relevant time:

...

- (2) *If the Minister is considering an application for:*

- (a) *a Partner (Migrant) (Class BC) visa; or*
- (b) *a Partner (Provisional) (Class UF) visa; or*
- (c) *a Partner (Residence) (Class BS) visa; or*
- (d) *a Partner (Temporary) (Class UK) visa;*

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) *The matters for subregulation (2) are:*

- (a) *the financial aspects of the relationship, including:*
 - (i) *any joint ownership of real estate or other major assets; and*
 - (ii) *any joint liabilities; and*
 - (iii) *the extent of any pooling of financial resources, especially in relation to major financial commitments; and*
 - (iv) *whether one person in the relationship owes any legal obligation in respect of the other; and*
 - (v) *the basis of any sharing of day-to-day household expenses; and*
- (b) *the nature of the household, including:*
 - (i) *any joint responsibility for the care and support of children; and*

- (ii) *the living arrangements of the persons; and*
- (iii) *any sharing of the responsibility for housework; and*
- (c) *the social aspects of the relationship, including:*
 - (i) *whether the persons represent themselves to other people as being married to each other; and*
 - (ii) *the opinion of the persons' friends and acquaintances about the nature of the relationship; and*
 - (iii) *any basis on which the persons plan and undertake joint social activities; and*
- (d) *the nature of the persons' commitment to each other, including:*
 - (i) *the duration of the relationship; and*
 - (ii) *the length of time during which the persons have lived together; and*
 - (iii) *the degree of companionship and emotional support that the persons draw from each other; and*
 - (iv) *whether the persons see the relationship as a long-term one.*

...

The application to this court

8. The application to this court was filed on 2 February 2017 and amended on 6 September 2017. The amended application contains eight grounds. The applicant only addressed ground 3 and a combination of grounds 4 and 8 in oral submissions. However, the applicant expressly stated that she did not withdraw the other grounds. She said that she relied only on her written submissions in relation to them. The Minister did not address the additional grounds in his oral submissions either. He relied only on his written submissions in relation to the additional grounds.

Ground 1

9. The first ground of review in the application filed on 2 February 2017 and amended on 6 September 2017 is:

The Administrative Appeals Tribunal (“Tribunal”) failed to properly consider the evidence of the Applicant and drew a material inference that was arbitrary, unreasonable and not open to it on the evidence of the Applicant and Visa Applicant (“parties”) (Asmir Ametov).

Particulars

- (a) *Paragraph 19 stated the Tribunal’s contention that the parties’ word “flirting” as an attempt to circumvent the contradictions in the parties’ statements.*
- (b) *Paragraph 20 and 22 stated the Tribunal’s view that it had limited evidence, but in fact the applicant has provided all the evidence to it, but it put little no weight or little weight on those evidence because of its arbitrary and unreasonable inference in paragraph 25, 27, 28, 39, 52, 60, 67, 73, 84, 86.*
10. As mentioned above, the parties did not make oral submissions on this ground. The applicant’s written submissions on this ground are unclear. The Minister said in his written submissions that it was unclear what evidence the Tribunal is said to have failed to consider and what inferences the Tribunal is said to have drawn arbitrarily, unreasonably or impermissibly on the evidence. For these reasons, the Minister submits that the ground is an impermissible attempt at merits review and should be dismissed.

11. I accept the Minister’s submissions on this ground.

Ground 2

12. The second ground of review in the application filed on 2 February 2017 and amended on 6 September 2017 is:

The Tribunal placed disproportionate weight on minor inconsistencies in the Applicant’s and Visa Applicant’s evidence and insufficient weight on the other evidence submitted by them.

Particulars

- (a) *Paragraph 19 stated that the Tribunal's concern about the contradictory statements.*
 - (b) *Paragraph 20 stated that the Tribunal has significant doubts about the genuine of the relationship.*
 - (c) *Paragraph 53 and 54 stated that the Tribunal put little weight on the neighbours' statements.*
 - (d) *Paragraph 71-73 stated that the Tribunal placed little weight on statements from the Visa Applicant's relatives.*
 - (e) *Paragraph 78 stated the Tribunal put more weight on minor inconsistencies between the Applicant and Visa Applicant.*
13. The applicant's written submissions on this ground did little more than restate the ground. The Minister said in his written submissions that it is well established that the weight to be given to particular items of evidence is a matter for the Tribunal.¹ Furthermore, the Minister submitted that this ground was an impermissible attempt to engage in merits review. I accept those submissions.

Ground 3

14. The third ground of review in the application filed on 2 February 2017 and amended on 6 September 2017 is:

The Tribunal was erred in fact finding that the relationship of the parties started in 2002 per paragraph 23 (errors in original)

15. This ground concerns a lengthy passage from the Tribunal's reasons, which was as follows:

15. *There is some controversy about how the parties claim they met. As stated in the departmental decision submitted to the Tribunal for the purposes of review, the applicant told the department in an interview on 23 May 2015, that the parties met through his sister Ms Emina Dervisevic when he was on holidays in Australia back in 1994. He further stated that there was no romantic relationship and after his departure from Australia, the parties' lives took divergent paths.*

¹*Kostas v HIA Insurance Services Pty Ltd* (2010) 241 CLR 390 at 418 [90]-[91] (Hayne, Heydon, Grennan and Kiefel JJ); (2010) 270 ALR 228; (2010) 84 ALJR 663; [2010] HCA 32

16. *The department noted, however, that this evidence contradicted the applicant's own statement in which he claimed that they were going out during this period in Australia. The sponsor's account at the time of application about how the relationship started in 1994, also indicated that the parties were romantically involved at that time, even though in a recent submission the migration agent has stated that this was confined to only "flirting".*
17. *At hearing the sponsor stated that she and Emina had been friends for some time and she happened to meet the applicant at Emina's house when the applicant was in Australia in 1994. She stated that she was not involved with the applicant on his visit to Australia and that actually they were just friends and talked when they met at Emina's house.*
18. *It was only in 2002 that the sponsor was at Emina's house and Emina was SKYPING her brother, the applicant, that the sponsor was walking passed the computer as she was going to the bathroom, that she saw the applicant again and on return from the bathroom they became reacquainted over SKYPE on that occasion. It is claimed that later in 2012 they started talking on SKYPE and other modes of communication. From there, the sponsor went overseas and the parties were engaged on 30 November 2013 some three days after the sponsor's arrival in Macedonia. They married on 12 June 2014 on the sponsor's next visit.*
19. *The Tribunal has concerns about the contradictory statements made by the applicant about when the relationship actually started and in the context of other difficulties with this case, is not satisfied that the evidence given at the interview with the department did not indicate that they were in a romantic relationship. Their attempts to say that they only flirted in 1994 is, in the view of the Tribunal, an attempt to diminish the significance of the contradictions in the parties' statements to the department at interview.*
20. *Furthermore, the Tribunal has concerns regarding the limited evidence of how the parties' relationship developed since 2012 from friendship to a decision to enter into a lifelong commitment together, and to the point that on arriving in Macedonia after 27 November 2013 the parties should become engaged several days later. The hazy details about how the relationship cemented itself into a spousal*

one leaves the Tribunal to have significant doubts about whether the arrangement was not entered into for the sole purpose of achieving a migration outcome for the applicant and his daughter, given that he has several family members in Australia, including an unwell and elderly mother, sister and brother.

21. *The sponsor's more recent statutory declaration dated 7 September 2016 discusses "Development of the relationship" but on reading, it is clear that it provides little detail about the relationship's development from 2002 as friends over the long term, referring mostly instead to the period of engagement and wedding and after.*
22. *While the inception and development of the relationship is by no means determinative of this review, the Tribunal considers that the opaque narrative of how the relationship developed, adds to the Tribunal's concerns about the applicant being in the relationship for the sole purpose of achieving a migration outcome.*
23. *The Tribunal notes that at hearing it was concerned that the applicant's divorce from his previous spouse may have been contrived to enable him to enter into a contrived relationship with the sponsor. The timing of the resumption of his communication with the sponsor by chance in 2002 when his marriage had failed or was failing, also raises concerns.*
24. *The sponsor's account at hearing as to why the applicant had only been married for a short period was not particularly persuasive. She stated that the applicant's former wife had left the marriage leaving the applicant to look after a child, Sara, who was almost two years of age at the time. The sponsor appeared to have little awareness of what may have driven the applicant's former wife to take such drastic action and leave behind a child who at that stage would still have been highly dependent on her. The Tribunal has sighted the Divorce Certificate granting the applicant custody of the child because the applicant's former wife appeared not to have any means to support herself and the child, nonetheless, the Tribunal considers it incongruous with two persons who claim to communicate extensively during their periods apart, that the sponsor would have known little detail about the circumstances in which the applicant's marriage faltered.*

25. *That the sponsor's marriage only dissolved officially in 2013 also raises questions in the mind of the Tribunal as to why it was only in 2013 that the marriage ended officially, just prior to her resuming contact with the applicant. The sponsor at hearing stated that she had kept the marriage together for the sake of the children and this is plausible, however, the Tribunal does remain concern about the timing.*

26. *In the migration agent's submission dated 12 September 2016, she has written:*

Selveta and Asmir first met in 1994. Selveta is best friends with Asmir's older sister Emina...At the time, Selveta was married and Asmir was committed to another person. However, the couple enjoyed each other's company and these fond memories would spark a relationship eighteen years later.

We are instructed that in about 2012, Asmir friend requested Selveta on several social media applications after seeing her again during a Skype call with his sister. Selveta happily accepted. A friendship developed into love and Selveta visited Asmir in Macedonia in 2013. They decided to commit to a relationship to the exclusion of all others.

27. *These statements do little, however, to assist the Tribunal understand why the parties considered that they were a suitable match after all the difficulties the sponsor had been through in her previous marriage.*

28. *The Tribunal places some negative weight, albeit limited, on the timing of the applicant's and sponsor's divorces, but again, the timing is by no means determinative of the review. The Tribunal's main focus is Regulation 1.15A.*

16. The Minister conceded that the Tribunal had made a factual error in finding that the relationship between the applicant and Mr Ametov commenced in 2002 rather than in 2012. However, the parties were in dispute about the effect of the factual error.

17. I would have thought that the error constituted a jurisdictional error consisting of failing to consider the claim as put. However, I will deal with the issue on the bases that were put to the court.

18. The Minister, in his written submissions, characterised the error as either a finding without evidence or an illogical or irrational finding. The applicant accepted those characterisations in her oral submissions.
19. The applicant argued, in relation to the no evidence ground, that this court was bound by the decision of the Full Court of the Federal Court in *SFGB v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 77 ALD 402; [2003] FCAFC 231, where Mansfield, Selway and Bennett JJ said at [19]:
- ... If the Tribunal makes a finding and that finding is a critical step in its ultimate conclusion and there is no evidence to support that finding then this may well constitute a jurisdictional error: see Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321 at 355-357. ...*
20. The Minister argued that *SFGB* was no longer good law. The Minister noted that, in *Australian Postal Corporation v D’Rozario* (2014) 222 FCR 303; (2014) 143 ALD 564; (2014) 311 ALR 257; [2014] FCAFC 89, the Full Court of the Federal Court reviewed the authorities on the no evidence ground. Besanko J noted that it was not settled when a finding of fact made without evidence would constitute a jurisdictional error, and said that the two competing approaches were that there would be jurisdictional error when:
- a) the finding without evidence was a precondition to the exercise of power, so that the erroneous finding concerned a jurisdictional fact; and
 - b) the finding is a critical step in the ultimate conclusion.
21. The Minister said that, in *D’Rozario*, Besanko J did not express a concluded view about which approach was preferable. However, the Minister submitted that, in *D’Rozario*, the other members of the bench, Jessup and Bromberg JJ, supported option (a).
22. In fact, Jessup J said at [67]:
- It will be apparent from what I have written above that I entertain some reservations about both the reasoning and the outcomes in SFGB and VOAQ. However, these cases were referred to as elements in the orthodox jurisprudence of the Court in the three recent Full Court judgments which I have mentioned. The “may”*

aspect of the Full Court's observations must at least be taken as indicating support for the reasoning and outcomes in SFGB and VOAQ. We were not invited to consider the correctness of these judgments. In my opinion, unless they can be distinguished, we are obliged to decide the present case consistently with them.

23. Similarly, Bromberg J said at [117]:

Despite the fact that I share the reservation previously expressed, I agree with Jessup J for the reasons his Honour has given at [67], that this application ought to be decided on the basis that SFGB is correct.

24. Obviously, this court must also proceed on the basis that *SFGB* is correct, unless it can be distinguished or it has been overturned. The Minister argued that, in *Buchwald v Minister for Immigration and Border Protection* (2016) 242 FCR 65; [2016] FCA 101, Bromberg J explained that *SFGB* had, in effect, been overturned by the High Court. Bromberg J said in *Buchwald*:

33. *The reasons for decision of Kenny J in SZNV v Minister for Immigration and Citizenship (2010) 118 ALD 232 at [38] disclose what appear to be two approaches in the authorities to the "no evidence" ground. A number (there cited) suggest that jurisdictional error lies where the decision-maker "makes a finding and that finding is a critical step in its ultimate conclusion and there is no evidence to support that finding". One of the cases her Honour cited, SFGB v Minister for Immigration and Multicultural and Indigenous Affairs (2003) 77 ALD 402 at [19], has been many times relied upon for that proposition. On the other hand, a number of authorities (again, set out in SZNV at [38]) stand broadly for the proposition that, for jurisdictional error to lie, the fact in support of which there is no evidence must be a jurisdictional fact. However, Kenny J expressly did not determine "whether these two approaches co-exist" nor, if a choice had to be made between them (sic), which was the preferred approach.*

34. *A number of High Court authorities seem to me to support the jurisdictional fact approach. In Minister for Immigration and Multicultural and Indigenous Affairs v SGLB (2004) 78 ALJR 992, Gummow and Hayne JJ (with whom Gleeson CJ agreed) said this, at [39]:*

To return to the first ground identified in the Federal Court, the “no evidence” ground, nothing in the Act made the question of whether or not the respondent suffered from PTSD a precondition to the exercise of jurisdiction. No question of a “no evidence” ground of jurisdictional error arises.

35. *In Minister for Immigration and Citizenship v SZMDS (2010) 240 CLR 611, Gummow A-CJ and Kiefel J said the following, at [31]:*

In Television Capricornia Pty Ltd v Australian Broadcasting Tribunal (1986) 13 FCR 511 at 514, 519-520, Wilcox J carefully, and with respect correctly, distinguished a “no evidence” ground respecting the existence of a jurisdictional fact, from the more debatable question (which does not arise in this appeal, as counsel for the first respondent stressed) of defective fact finding as an independent ground of judicial review, or as indicative of an “error of law” within the meaning of the AD(JR) Act.

36. *One of Wilcox J’s observations in Television Capricornia Pty Ltd v Australian Broadcasting Tribunal (1986) 13 FCR 511, which Gummow A-CJ and Kiefel J approved in the above extract, was this (at 514):*

All of the cases, of which I am aware, in which “no evidence” has been treated as a separate ground were cases in which the power to make the relevant decision depended upon the prior establishment of a particular fact, it being held in those cases that there was no evidence of that fact

37. *In Australian Postal Corporation v D’Rozario (2014) 222 FCR 303 at [108], I expressed reservations as to the correctness of SFGB and the line of authority following it. That reservation was also expressed by Jessup J at [50].*

38. *Finally, in Plaintiff S156/2013 v Minister for Immigration and Border Protection (2014) 254 CLR 28, French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ said this, at [46]:*

The plaintiff also argues that there was no evidence that PNG would fulfil its assurances and would promote the maintenance of a programme which was

fair to UMAs. However, there was no statutory requirement that the Minister be satisfied of these matters in order to exercise the relevant power. They do not qualify as jurisdictional facts ([SGLB] (2004) 78 ALJR 992 at 998-999 [39]; 207 ALR 12 at 21; [SZMDS] (2010) 240 CLR 611 at 622 [31]).

39. *Especially in the light of what was said in the last-mentioned case by a unanimous High Court, it seems that the jurisdictional fact approach is the preferred approach to the “no evidence” ground as a stand-alone ground of judicial review. And, Mr Buchwald accepted in the course of oral submissions that in order to establish a “no evidence” ground it was necessary that the fact of which there is no evidence be a jurisdictional fact. ...*
25. In *Buchwald*, Bromberg J sat as a single judge at first instance. As such, *Buchwald* could not overturn the decision of the Full Court of the Federal Court in *SFGB*, which is a frequently cited case of long-standing.
26. The High Court cases mentioned by Bromberg J in *Buchwald* preceded *D’Rozario*. *SGLB* was decided by the High Court in 2004. *SZMDS* was decided by the High Court in 2010. *Plaintiff S156/2013* was decided by the High Court on 18 June 2014. *D’Rozario* was decided by the Full Court of the Federal Court on 23 July 2014.
27. In *D’Rozario*, the Full Court of the Federal Court was not invited to hold that *SFGB* was wrongly decided. I am invited to determine that *SFGB* was wrongly decided. Obviously, a court at this level cannot overturn a decision of the Full Court of the Federal Court. However, just as Bromberg J, sitting as a single judge at first instance, was able to determine that *SFGB* was inconsistent with High Court authority, I can as well.
28. I am persuaded that *Buchwald* correctly encapsulates the law on the no evidence ground, and that a finding without evidence only amounts to a jurisdictional error if the finding concerns a jurisdictional fact. The finding for which there was no evidence in the present case, being the erroneous fact that the relationship began in 2002, was not a jurisdictional fact. Therefore, the no evidence ground cannot succeed in the present case.

29. In relation to the second aspect of this ground, in which it is alleged that the erroneous finding was an illogical or irrational finding, the applicant relied on *Gill v Minister for Immigration and Border Protection* (2017) 250 FCR 309; [2017] FCAFC 51, where Griffiths and Moshinsky JJ said:

79. *The Minister submitted that any erroneous fact-finding by the Tribunal concerning the appellant's evidence relating to these matters were not material errors because the Tribunal relied upon other matters in concluding both that the work experience letter was not genuine and the appellant's evidence was not credible. ...*

80. *For the following reasons, the Minister's submission should be rejected. First, as noted above, the Tribunal member gave particular prominence to her adverse findings relating to the appellant's evidence*

81. *Secondly, and perhaps more significantly, it is evident on a fair reading of the Tribunal's reasons that its reasoning process leading up to its ultimate conclusion that the work experience letter was bogus and the appellant's evidence lacked credibility was to weigh, on the one hand, all the adverse findings set out in [21] against, on the other hand, other matters which are set out in [22] and [23] and which may have explained the deficiencies in the appellant's oral evidence. ...*

82. *Having regard to the weighing exercise conducted by the Tribunal in these critical paragraphs of its reasons, it cannot be said that the weighing exercise would have produced the same outcome if the Tribunal had not taken into account its illogical and erroneous findings of fact In other words, this is not a case where illogical findings of fact were not material to the Tribunal's ultimate conclusions (see Wigney J's helpful analysis in *SZWCO v Minister for Immigration and Border Protection* [2016] FCA 51 at [60] to [67], relating to inter alia adverse credibility findings which are based on a range of matters, only some of which are illogical or irrational).*

30. The Minister relied on *SZWCO v Minister for Immigration and Border Protection* [2016] FCA 51, where Wigney J said:

63. *Second, it is clear from the judgment of Crennan and Bell JJ in *SZMDS* that not every lapse in logic will give rise to*

jurisdictional error. If particular findings or reasoning “on the way” to the ultimate decision are challenged on the basis of illogicality and irrationality, it must be shown that the finding was not one that could have been made by, or reasoning that could not have been employed by, a reasonable or rational person. Emphatic disagreement does not suffice. If the finding of fact or reasoning employed was a finding or reasoning upon which reasonable minds might differ, it cannot be concluded that the finding or reasoning was illogical or irrational. As Robertson J put it in SZRKT (at [148]):

In my opinion, the ground of “engaging in a process of reasoning that was illogical, irrational and not based on findings or inferences of fact supported by logical grounds” is to be taken to refer to extreme illogicality or irrationality, measured against the standard that it is not enough for the question of fact to be one on which reasonable minds may come to different conclusions and against the framework of the inquiry being as to whether or not there has been jurisdictional error on the part of the Tribunal.

64. *Third, whilst the inquiry may not be limited to the question whether the end result is illogical or irrational, it does not follow that the ultimate decision will be found to have been affected by jurisdictional error if it can be shown that any finding made, or any reasoning employed, by the decision maker on the way to that ultimate decision may have been illogical or irrational. If the impugned finding or reasoning was immaterial to the ultimate decision, it is difficult to see how the decision could be said to have been affected by jurisdictional error: cf. SZRKT at [158]; SZOCT (per Nicholas J at [83]-[84]). Likewise, if the ultimate decision was supported by other findings that were open on the evidence, and other reasoning that was logical and rational, there may be no proper basis for concluding that the ultimate decision was so infected by the impugned finding or reasoning as to involve jurisdictional error.*
65. *It is not desirable, and perhaps not possible, to come up with a single test or form of words to determine or describe when some illogical or irrational fact-finding or reasoning on the way to arriving at the ultimate decision can be said to sufficiently infect the final decision so as to constitute jurisdictional error. Each case and each decision must be considered having regard to the particular facts and*

circumstances of the case. Ultimately, it will depend on the nature and degree of the illogicality or irrationality involved.

66. *An example, apposite to this case, may assist in illustrating this point. Many decisions of the Tribunal ultimately turn on findings about the honesty and credibility of the review applicant. If the Tribunal finds that the review applicant was not a credible witness and had falsified or exaggerated the claims that provided the basis for the claim that they had a well-founded fear of persecution, or were at risk of significant harm, it is likely to be open to the Tribunal to find that it was not satisfied that the review applicant was a non-citizen to whom Australia owed protection obligations. Often an adverse credibility finding is based on a number of facts and circumstances. If one of the findings, or the Tribunal's reasoning based on that finding, could be said to be illogical or irrational, it does not necessarily follow that the Tribunal's ultimate decision was affected by jurisdictional error. If the degree and nature of the illogicality or irrationality was not significant, and other facts and circumstances found by the Tribunal were capable of logically and rationally supporting the adverse credibility finding, or even that reasonable minds might differ based on those matters, it could not be concluded that the adverse credibility finding was illogical or irrational. Nor could it be found that the Tribunal's decision that it was not satisfied that the visa applicant was a non-citizen to whom Australia owed protection obligations involved jurisdictional error.*

31. In the present case, the error could not have been made by a reasonable or rational person. The Tribunal simply thought, for no reason, that the applicant and Mr Ametov had resumed their relationship in 2002 when they in fact resumed it in 2012.
32. The Minister did not suggest that the error was one on which reasonable minds may differ. Rather, the Minister submitted that the error was not critical to the Tribunal's ultimate decision.
33. The applicant submitted that the error was a critical step in the Tribunal's ultimate conclusion that the applicant and Mr Ametov were not in a married relationship. The applicant pointed particularly to paragraphs 22 and 23 of the Tribunal's reasons for decision, which are as follows:

22. *While the inception and development of the relationship is by no means determinative of this review, the Tribunal considers that the opaque narrative of how the relationship developed, adds to the Tribunal's concerns about the applicant being in the relationship for the sole purpose of achieving a migration outcome.*
23. *The Tribunal notes that at hearing it was concerned that the applicant's divorce from his previous spouse may have been contrived to enable him to enter into a contrived relationship with the sponsor. The timing of the resumption of his communication with the sponsor by chance in 2002 when his marriage had failed or was failing, also raises concerns.*
34. The Minister submitted that the error was not a critical step in the Tribunal's ultimate conclusion, and pointed particularly to paragraph 28 of the Tribunal's reasons for decision, which is as follows:
- The Tribunal places some negative weight, albeit limited, on the timing of the applicant's and sponsor's divorces, but again, the timing is by no means determinative of the review. The Tribunal's main focus is Regulation 1.15A.*
35. The Minister submitted that the error was not a critical step because the Tribunal expressly said that it placed some negative but limited weight on the timing of the divorces, but its main focus was reg.1.15A of the Regulations.
36. The Tribunal noted that the applicant's divorce occurred in 2013,² and Mr Ametov's marriage ended in 2003.³ The Tribunal said in paragraph 23 of its reasons for decision that:
- ... The timing of the resumption of his communication with the sponsor by chance in 2002 when his marriage had failed or was failing, also raises concerns.*
37. Mr Ametov's communication with the applicant did not resume in 2002. It resumed in 2012, 10 years after Mr Ametov's marriage had failed or was failing. Therefore, the Tribunal identified concerns in paragraph 23 of its reasons for decision that arose from a

² Paragraph 25

³ Paragraph 10

misunderstanding of the evidence. The Tribunal's concerns about the timing of the divorces also seems to be based on a misunderstanding of the timing of Mr Ametov's divorce, relative to the communication resuming. The Tribunal itself said that it gave that issue some negative weight, albeit limited.

38. In considering a partner visa application, the Tribunal is required by reg.1.15A of the Regulations to consider **all** of the circumstances of the relationship, not only the matters listed in the Regulations. Therefore, the circumstance of the timing of the divorces, and the circumstance of the timing of the resumption of the relationship, were relevant matters that the Tribunal was obliged to consider. If it misapprehended those matters, it was not considering the matters it was obliged to consider, and weigh in the balance. In these circumstances, it seems to me that the factual error about the time when the relationship resumed was a critical step in the Tribunal's ultimate conclusion.
39. Nevertheless, the Minister submitted that there were other circumstances that supported the Tribunal's ultimate conclusion, and the decision should be allowed to stand for that reason. However, that seems to me to be an invitation to merits review. It is not for this court to determine whether the Tribunal would have come to the same decision if it had understood the facts differently.
40. In the alternative, the Minister said that the Tribunal's decision was based on a wide range of other factors, which provided an independent basis for the Tribunal's conclusion. However, this submission falls foul of *Gill*, where the weighing exercise was such that the court could not be sure that, absent the error, the same conclusion would have been reached. Moreover, on any view, the other matters considered by the Tribunal cannot properly be understood as an independent basis for its decision, because the Tribunal had to weigh **all** of the circumstances of the relationship. None of the circumstances of the relationship could be understood as independent.
41. In my view ground 3 is made out.

Ground 4

42. The fourth ground of review in the application filed on 2 February 2017 and amended on 6 September 2017 is:

The Tribunal's fact finding was objectively unreasonable or without logical and probative basis.

Particulars

- (a) *Paragraph 33 stated that the parties do not have common financial commitment by having the car registered in the Visa Applicant's name only.*
 - (b) *Paragraph 37 and 38 stated that the Tribunal's finding that money could be sent back to the Applicant is unfounded.*
 - (c) *Paragraph 45 shows the Tribunal's failure to accord procedural fairness in relation to the failure to inquire the Applicant about the tax return and Medicare or centre Link.*
43. This ground concerned the Tribunal's consideration of the financial aspects of the relationship. Part of the Tribunal's reasons on that issue is as follows:

- 29. *The sponsor now claims that she is no longer working and that she received a superannuation payment of some \$60,000/\$70,000. She now works in unpaid caring roles for her mother, the applicant's mother, as well as assisting with her grandchildren. The applicant now claims that he is not working because economic circumstances in the village are difficult and that he relies on the sponsor for himself and his daughter as well as his mother's pension. In her recent statutory declaration the sponsor claims that the applicant also takes care of the family farm but it is not a primary source of income.*
- 30. *The Tribunal accepts that the parties are geographically separated and that it would not be expected that the parties would have pooled their resources to the extent they might have been able to, were they living together on a full-time basis. Nonetheless, the Tribunal has noted evidence of significant amounts of money belonging to the sponsor being used by someone in Macedonia, and the Tribunal is prepared to accept that the applicant is the beneficiary. The Tribunal has sighted evidence of the sponsor providing*

funds to the applicant and that the applicant has a debit card which gives him access to the sponsor's funds.

- 31. The sponsor also sends the applicant \$200 every fortnight. And the Tribunal accepts that this is the case.*
- 32. Other funds belonging to the sponsor, from 2013 to 2015, it is claimed, have been withdrawn by the sponsor for use in Macedonia to pay for expenses and for what is claimed are renovation expenses for a joint property. There is evidence of the sponsor having transmitted overseas \$15,000 which it claimed has been used to making the property comfortable. This property is in the name of the applicant only.*
- 33. Similarly, it is also claimed that the sponsor has purchased a car for the parties' use in Macedonia although the car is only registered in the applicant's name.*
- 34. It is claimed that these funds are being used to pay for Sara's basic necessities of food, clothing and shelter, although the Tribunal has limited evidence of such funds being used for such purposes.*
- 35. In her submission of 12 September 2016, it is stated that the sponsor receives a Centrelink pension which supports her and the applicant and his daughter. In that submission it is also claimed that the parties hope to open a joint bank account together once the applicant joins the sponsor in Australia. It appears that the sponsor (sic) has already secured himself a job when he arrives in Australia, as a labourer with his older brother who owns a building construction company here.*
- 36. The Tribunal has no doubt that the sponsor is moving significant amounts of funds overseas. The evidence of how these funds might be spent, however, is minimal. Much of the evidence presented is by way of assertions by the parties that the money is being used for the parties' joint property in Macedonia and for the everyday needs of the applicant and his child.*
- 37. Despite this extensive evidence of funds being made available overseas, however, the Tribunal has concerns about the extent to which such movement of money can easily be reimbursed to the sender. Much has been made of the amounts of money that have been withdrawn from her account, but little has been provided by way of explanation*

as to the sums of money that have been deposited into her account, particularly when she was working as a community support worker – a profession which is not particularly well remunerated.

38. *On 4 July 2014 there is an amount deposited of \$1,000, the source of which is not identified. On 17 July 2015 a cash deposit is made in the Commonwealth account of \$3,200. Later in July the applicant has received a further cash injection into account of \$1,110. On 16 November 2015, a deposit by cheque is made of \$1,433.65. In 2016 (Folio 68, Tribunal file) there is reference to another \$1,500 cash deposit; its provenance unclear. Later in July the applicant has received a further cash injection into account of \$1,110.*
39. *The Tribunal does not have evidence that the applicant is depositing the funds that she has sent him back into her account on a regular basis, however, were this to be the case, there would be no way of the Tribunal being able to verify this. Furthermore, were any of the applicant's family in Australia making deposits into her account, it would undermine the sponsor's arguments that she is largely supporting the applicant and the sponsor and the Tribunal would have to be concerned that the sponsor's funds were only sent overseas for the sole purpose of the fulfilment of the requirements of Regulation 1.15A. The applicant may have a reasonable explanation for the cash deposits in particular, but the Tribunal simply highlights that just because money is being moved overseas, this is not always indicative of two parties being in a genuine and continuing spousal relationship, as funds can easily be redirected elsewhere.*
40. *More recently, in a submission dated 29 November 2016, the sponsor has submitted a statement from her most recent ANZ account ending in x833 showing a deposit of \$70,000 which the applicant is claiming is the superannuation deposit, even though there is little from the entry to indicate that the funds were deposited by a superannuation fund. Nonetheless, the Tribunal for the purposes of this review is prepared to accept that this is the case. Withdrawals are also made from this account purportedly to show that the funds are being used by the applicant for the parties' joint household/family overseas. The Tribunal places some positive weight on this matter but again the Tribunal is not convinced that simply shifting large amounts of money overseas without some probative evidence that it is simply*

not being returned in some other way, does not lead the Tribunal to be automatically satisfied that the parties are in a genuine and continuing spousal relationship.

...

45. *Furthermore, the Tribunal also notes that the sponsor claims to be in receipt of a Centrelink pension. The Tribunal notes that in receiving Centrelink payments the sponsor would have had to declare the applicant as her spouse. The rate at which the sponsor is paid her benefits would be dependent on whether she declares herself as single or married. Evidence of her having declared herself as married would have provided powerful evidence of the sponsor declaring herself to Australia's government agencies as being in a spousal relationship.*
46. *Similarly, the sponsor would have, during the periods she was working, and covering the periods she has been married, provided tax returns which would similarly have provided the sponsor an opportunity to declare her marital status.*
47. *As it is, little such probative and official evidence has been submitted to the Tribunal to demonstrate that the parties' are representing themselves as spouses for the purposes of their financial affairs.*

44. In her written submissions in relation to this ground, the applicant said that the Tribunal failed to ask the applicant why the car was registered only in Mr Ametov's name. However, it was for the applicant to make out her case. The Tribunal was not bound to ask the applicant questions to bolster her case.
45. In her written submissions in relation to this ground, the applicant said that the Tribunal found without evidence that money paid by the applicant to Mr Ametov in Macedonia could be repaid. The Tribunal did not find that the money was being repaid. It simply said it could have been. There was no need for evidence for that comment. It is obvious. In any event, as discussed above, the no evidence ground only applies to jurisdictional facts. This matter was not a jurisdictional fact.

46. Moreover, the Tribunal simply said that, because money sent overseas could be returned, and there were some unexplained deposits in the applicant's bank account, the Tribunal would not be automatically satisfied on the basis of the bank statements showing money being sent to Mr Ametov that the applicant and Mr Ametov were in a genuine spousal relationship. So far as it goes, that statement is unexceptionable.
47. The applicant said that the Tribunal found without evidence that the applicant's profession, as a community support worker, was not particularly well remunerated. However, there did not need to be evidence for that finding. It is a matter of common knowledge. Moreover, there was evidence for that finding in the applicant's bank statements, which showed her income from her work as a community support worker. In any event, as discussed above, the no evidence ground only applies to jurisdictional facts. This matter was not a jurisdictional fact.
48. The applicant also said that the Tribunal failed to ask the applicant about the source of her funds, as she worked two jobs. However, the Tribunal was not obliged to ask the applicant questions to bolster her case. It was for the applicant to put such material as she wished before the Tribunal.
49. The applicant said that the Tribunal did not ask the applicant whether she had declared Mr Ametov as her spouse for tax and social security purposes. However, as discussed above, it was for the applicant to make out her case. The Tribunal was not obliged to ask questions to assist the applicant to bolster her case.
50. In her written submissions, the applicant also took issue with paragraph 87 of the Tribunal's reasons for decision, which is as follows:

At the time of application very little evidence against each of the elements of Regulation 1.15A was submitted to demonstrate that the parties were in a genuine and continuing spousal relationship. It concerns the Tribunal that at the time of writing this decision, the parties knowledge of one another continues to be limited and that their future plans continue to be somewhat vague, apart from

the fact that the applicant has already secured employment in his brother's construction company.

51. The applicant's complaint about this paragraph is unclear, but it seems to seek impermissible merits review.
52. In oral submissions, the applicant said that her first point about ground 4 was that there was no evidence to support the Tribunal's view, which it obviously put some weight on, despite its protestations to the contrary, that the money the applicant sent overseas to Mr Ametov had been returned to the applicant's bank account. That may be so, but, as discussed above, it is not a jurisdictional fact.
53. In the alternative, the applicant said that it was illogical and irrational for the Tribunal to consider that Mr Ametov may have repaid the money that the applicant sent him. That does not strike me as irrational or illogical. It was a possibility, in view of the unexplained deposits in the applicant's bank account.
54. The applicant also said that the Tribunal should have put to the applicant under s.359A of the Act that it was going to form that view. The applicant argued that this went beyond subjective appraisal.
55. The Minister argued that this issue did not engage s.359A of the Act because the information that the deposits went into the applicant's bank account was information given by the applicant herself for the purposes of the review. Consequently, the information about the deposits was caught by the exception in s.359A(4)(b) of the Act. I accept that submission.
56. The Minister said further that the Tribunal's treatment of the deposits was a subjective appraisal, and, consequently, it did not need to be put to the applicant: *SZBYR v Minister for Immigration and Citizenship* (2007) 96 ALD 1; (2007) 235 ALR 609; (2007) 81 ALJR 1190; [2007] HCA 26. I do not accept that submission.
57. The Tribunal tried to say that it was not taking into account the possibility that the deposits into the applicant's bank account were repayments by Mr Ametov or his family. Indeed, the Tribunal said in paragraph 40 of its reasons for decision that the applicant may have a reasonable explanation for the deposits.

58. However, reading the Tribunal's reasons as a whole, it is clear that the Tribunal did not accept that the applicant had paid money for the support of Mr Ametov overseas that had not been repaid. The Tribunal did not say that it accepted that. Instead, it made veiled insinuations about money being repaid surreptitiously.
59. The Tribunal spent a lot of time explaining the ease with which money could be repaid by Mr Ametov or his family. To suggest that the Tribunal placed no weight on that possibility beggars belief.
60. Moreover, the Tribunal's reasons do not clearly set out what findings it made or what weight it placed on those findings. Rather, the Tribunal sets out a somewhat rambling discussion of the matters listed in reg.1.15A of the Regulations, and then simply concludes, in paragraph 89 of the reasons for decision:
- ... Given these findings the Tribunal is not satisfied that at the time the visa application was made and at the time of this decision the parties were in a spousal relationship.*
61. In these circumstances, it seems to me that the Tribunal did form the view, and did place weight on the view, that Mr Ametov or his family repaid money that the applicant had paid to him, and thus, she was not really supporting him.
62. That may be factually correct. However, it was a new issue. The delegate did not make any such finding or raise any such possibility. It was not obvious on the known material. Consequently, it was a matter that had to be put to the applicant, under the principle described in *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152; (2006) 93 ALD 300; (2006) 231 ALR 592; (2006) 81 ALJR 515; [2006] HCA 63. I consider that the applicant's complaint about procedural fairness extends to a complaint under s.360 of the Act. Therefore, ground 4 is made out.
63. I accept the Minister's submission under s.359A of the Act. That is, I accept that the information about the deposits was given by the applicant for the purposes of the review, and that the Tribunal's consideration of that information was the Tribunal's subjective appraisal. Consequently, there was no breach of s.359A of the Act in relation to this issue.

Ground 5

64. The fifth ground of review in the application filed on 2 February 2017 and amended on 6 September 2017 is:

The decision of the Tribunal was bias.

Particulars

- (a) *Paragraph 19 stated that the Tribunal's contention that there was a genuine and ongoing relationship based on the interview with the delegate.*
 - (b) *Paragraph 20 and 22 stated that the purpose of the arrangement was to achieve a migration outcome.*
 - (c) *Paragraph 39 and 40 stated that by sending money overseas is not indicative of genuine and continuing relationship.*
 - (d) *It put no weight on the Visa Applicant's relative per paragraph 66, 70, 72, 73.*
 - (e) *It put limited weight on the neighbours' statements per paragraph 54; the Applicant's role in caring for the Visa Applicant's mother per paragraph 88; and no weight on the parties' communication per paragraph 89.*
65. The applicant's written submissions on this ground did little more than restate the ground. The Minister said in his written submissions that the test for apprehended bias was whether a reasonably well informed fair minded lay observer might reasonably apprehend that the decision maker might not bring an impartial mind to the decision.⁴ The Minister noted that the applicant had not pointed to anything that satisfied that test. The Minister noted that merely making findings adverse to the applicant is not sufficient to establish a reasonable apprehension of bias. I accept the Minister's submissions on this ground.

Ground 6

66. The sixth ground of review in the application filed on 2 February 2017 and amended on 6 September 2017 is:

The Tribunal's decision and reasoning process were irrational.

⁴*Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at 343-345 [4]-[6]; (2000) 63 ALD 577; (2000) 176 ALR 644; (2000) 75 ALJR 277; (2000) 21(20) Leg Rep 13; [2000] HCA 63, per Gleeson CJ, McHugh, Gummow and Hayne JJ

Particulars

- (a) *Paragraph 31, 32, 33, 34, 35 stated that there was evidence of financial commitment between the parties.*
- (b) *The Applicant also declared with the government that the Visa Applicant is her spouse on tax return, Medicare and centre link.*
- (c) *The Applicant provided evidence of photos, text messages, and statements from neighbours Visa Applicant's relatives' statements, her and her husband's statutory declarations to prove the genuine of the relationship.*
- (d) *The Tribunal's expectation that the Applicant should obtain statements from the community where they reside is unreasonable per paragraph 58 and 59 as the community would not closely pay attention to their relationship.*
- (e) *There were inconsistencies from the Applicant or the Visa Applicant per paragraph 42, 77, 84. However the extent of the consistencies is not so significant that the Tribunal put a lot of weight on them to consider that the relationship is not genuine. Provided that the parties live in different countries, it would be reasonable to expect that there is miscommunication or events that either party would not be aware off. If the Tribunal consider the evidence of the Applicant as the whole, the other evidence would be substantially outweighs the inconsistencies to prove that there was a genuine and long term relationship.*

67. The applicant's written submissions on this ground restate the ground, set out the applicable legislation, summarise the evidence and, in some instances, seek to supplement the evidence, and otherwise seek to challenge the merits of the decision. I am unable to discern anything in the matters identified in this ground or in the written submissions in support of it that could amount to an irrational decision. This appears to be another impermissible attempt at merits review.

Ground 7

68. The seventh ground of review in the application filed on 2 February 2017 and amended on 6 September 2017 is:

The Tribunal failed to take into consideration of relevant materials. Paragraph 54, 66, 69, 71 and 73 stated that the

Tribunal did not put any weight on those statements from the witnesses mentioned in these paragraphs.

69. The applicant's written submissions in relation to this ground simply restate the ground. The Minister submitted that the weight to be given to particular items of evidence is a matter for the Tribunal. I accept that submission.
70. I also note that the Tribunal did not say it gave no weight to the nominated evidence. It variously said it was giving *limited* weight, *some* weight, *did not discount this evidence entirely*, or, in the case of paragraphs 68 and 69, said the evidence did not shed any light on the nature of the relationship. Those conclusions were open to the Tribunal.

Ground 8

71. The eighth ground of review in the application filed on 2 February 2017 and amended on 6 September 2017 is:

There is a failure on the Tribunal to accord procedural fairness per paragraph 39 and 89 where the Tribunal did not afford the Applicant or Visa Applicant an opportunity to explain their claim.

72. Paragraph 39 of the Tribunal's reasons has already been dealt with. Paragraph 89 of the Tribunal's reasons is as follows:

The Tribunal has sighted evidence of communication over the internet by the parties but his (sic) is not in English and the Tribunal is not able to identify the nature of any communication, leading it to place little weight on it as evidence that the parties during several years' away from each other have been communicating on matters that are key to their everyday existence.

The Tribunal is therefore not satisfied that the parties have a mutual commitment to a shared life to the exclusion of others; or that their relationship is a genuine and continuing one. Moreover, from the paucity of evidence the Tribunal is not satisfied that the parties are not living separately and apart on a permanent basis. Given these findings the Tribunal is not satisfied that at the time the visa application was made and at the time of this decision the parties were in a spousal relationship.

73. The applicant's complaint about paragraph 89 of the Tribunal's reasons for decision was explained in oral submissions. The complaint was that the Tribunal denied the applicant procedural fairness by not putting her on notice that it would not take into account untranslated documents. This is not a denial of procedural fairness. The applicant was represented. It was up to the applicant to provide evidence in a form that the Tribunal could read.
74. The applicant also said that the interpreter at the Tribunal hearing should have been utilised to translate the documents between CB280 to CB319. Interpreters at Tribunal hearings are not made available for such purposes.
75. The applicant also suggested that the Tribunal may have failed to consider a relevant consideration, being the untranslated internet communications. The Tribunal was under no obligation to consider untranslated documents.
76. This ground is not made out.

Conclusion

77. As two of the applicant's grounds have been made out, the matter will be remitted to the Tribunal for re-determination according to law. The Minister will be required to pay the applicant's costs of the proceeding.
78. I would add that the Tribunal in this case seems to have considered that a relationship can only satisfy the definition of a married relationship if it is based on Western notions of romantic love. Obviously, there are millions of people around the world who are in arranged and other marriages that are genuine and continuing, but which are not based on romantic love.

79. The Tribunal also seems in this case to have considered that a married relationship is genuine and continuing only if it accords with an inner suburban, middle class aspiration of equality and sharing of financial and other information. However, obviously, most genuine marriages around the world to this day have an enormous power imbalance and many genuine marriages, even in Australia, do not involve a complete sharing of financial and other information. That is apparent from sitting in the family law jurisdiction of this court.

I certify that the preceding seventy-nine (79) paragraphs are a true copy of the reasons for judgment of Judge Riley

Associate:

Date: 22 January 2018